

Part 2

Disposition of Defendants Found Guilty with a Mental Illness

77-16a-201 Probation.

- (1)
 - (a) In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty with a mental illness at the time of the offense, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.
 - (b) The court may not place an offender who has been convicted of the felony offenses listed in Section 76-3-406 on probation, regardless of whether the offender has, or had, a mental illness.
- (2) The period of probation for a felony offense committed by a person who has been found guilty with a mental illness at the time of the offense may be for no less than five years. Probation for those offenders may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.
- (3)
 - (a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.
 - (b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.
 - (c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.
- (4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.
- (5) The court may not release an offender with a mental illness into the community, as a part of probation, if it finds by clear and convincing evidence that the offender:
 - (a) poses an immediate physical danger to self or others, including jeopardizing the offender's own or others' safety, health, or welfare if released into the community; or
 - (b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.
- (6) An offender with a mental illness who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Amended by Chapter 366, 2011 General Session

77-16a-202 Person found guilty with a mental illness -- Commitment to department -- Admission to Utah State Hospital.

- (1) In sentencing and committing an offender with a mental illness to the department under Subsection 77-16a-104(3)(a), the court shall:

- (a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or
 - (b) sentence the offender to a term of imprisonment and order that the offender be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).
- (2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of an offender with a mental illness who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.
- (3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.
- (4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

**77-16a-203 Review of offenders with a mental illness committed to department --
Recommendations for transfer to Department of Corrections.**

- (1)
- (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental illness committed to it in accordance with Section 77-16a-202, at least once every six months.
 - (b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section 62A-5-101.
- (2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:
- (a) regarding the offender's:
 - (i) current mental condition;
 - (ii) progress since commitment; and
 - (iii) prognosis; and

- (b) that includes a recommendation regarding whether the offender with a mental illness should be:
 - (i) transferred to UDC; or
 - (ii) remain in the custody of the department.
- (3)
 - (a) The executive director shall notify the UDC medical administrator, and the board's mental health adviser that an offender with a mental illness is eligible for transfer to UDC if the review team finds that the offender:
 - (i) no longer has a mental illness; or
 - (ii) has a mental illness and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and
 - (iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.
 - (b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:
 - (i) all available clinical facts;
 - (ii) the diagnosis;
 - (iii) the course of treatment received at the mental health facility;
 - (iv) the prognosis for remission of symptoms;
 - (v) the potential for recidivism;
 - (vi) an estimation of the offender's dangerousness, either to self or others; and
 - (vii) recommendations for future treatment.

Amended by Chapter 366, 2011 General Session

77-16a-204 UDC acceptance of transfer of persons found guilty with a mental illness -- Retransfer from UDC to department for admission to the Utah State Hospital.

- (1) The UDC medical administrator shall designate a transfer team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the recommendation made by the department's review team pursuant to Section 77-16a-203. If the offender has an intellectual disability, the transfer team shall include at least one person who has expertise in testing and diagnosis of people with intellectual disabilities.
- (2) The transfer team shall concur in the recommendation if the transfer team determines that UDC can provide the offender with a mental illness with adequate mental health treatment.
- (3) The UDC transfer team and medical administrator shall recommend the facility in which the offender should be placed and the treatment to be provided in order for the offender's mental condition to remain stabilized to the director of the Division of Institutional Operations, within the Department of Corrections.
- (4) In the event that the department and UDC do not agree on the transfer of an offender with a mental illness, the administrator of the mental health facility where the offender is located shall notify the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall be provided with copies of all reports and recommendations. The board's mental health adviser shall make a recommendation to the board on the transfer and the board shall issue its decision within 30 days.
- (5) UDC shall notify the board whenever an offender with a mental illness is transferred from the department to UDC.

- (6) When an offender with a mental illness sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.
- (7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.
- (8) An offender with a mental illness who has been readmitted to the Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section 77-16a-203.

Amended by Chapter 366, 2011 General Session

77-16a-205 Parole.

- (1) When an offender with a mental illness who has been committed to the department becomes eligible to be considered for parole, the board shall request a recommendation from the executive director and from UDC before placing the offender on parole.
- (2) Before setting a parole date, the board shall request that its mental health adviser prepare a report regarding the offender with a mental illness, including:
 - (a) all available clinical facts;
 - (b) the diagnosis;
 - (c) the course of treatment received at the mental health facility;
 - (d) the prognosis for remission of symptoms;
 - (e) potential for recidivism;
 - (f) an estimation of the dangerousness of the offender with a mental illness either to self or others; and
 - (g) recommendations for future treatment.
- (3) Based on the report described in Subsection (2), the board may place the offender with a mental illness on parole. The board may require mental health treatment as a condition of parole. If treatment is ordered, failure to continue treatment, except by agreement with the treatment provider, and the board, is a basis for initiation of parole violation hearings by the board.
- (4) UDC, through Adult Probation and Parole, shall monitor the status of an offender with a mental illness who has been placed on parole. UDC may provide treatment by contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.
- (5) The period of parole may be no less than five years, or until expiration of the defendant's sentence, whichever occurs first. The board may not subsequently reduce the period of parole without considering an updated report on the offender's current mental condition.

Amended by Chapter 366, 2011 General Session